IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.615 of 2000.
Judgment reserved on: 20.9.2007
Date of decision: September 26th , 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Alam and others. ……. Respondent.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr.S.D. Vasudeva, Addl. Advocate General.

For the Respondents: Mr. Vinay Thakur, Advocate.

Surinder Singh, J :

The respondents were acquitted by the learned Chief Judicial Magistrate, for the offence under Sections 147,148,149,325 and 506 of the Indian Penal Code, which has been assailed in this appeal, on the ground that the learned trial court failed to view the prosecution evidence in its proper perspective and has wrongly discarded the testimony of the prosecution witnesses on untenable grounds.

I have heard Shri S.D. Vasudeva, leaned Additional Advocate General and Shri Vinay Thakur, learned Advocate for the respondents and have carefully gone through the evidence on record.

In brief, the prosecution case has been that Ram Dulari (PW1) and Fameeda (PW2), are both neighbourers. It is alleged that on Ist August, 1997, at about 6.50 p.m., Fameeda was trying to take water from the tap of the complainant, through a rubber pipe,

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Whether reporters of local Papers may be allowed to see the judgment? Yes

which was objected to by the respondents and the respondents started abusing her. As the fight was about to ensue, Ram Dulari (PW1) intervened unsuccessfully. Respondents started beating her. She sustained injuries on her right hand finger, back and the head. She was rescued by Kanta and Kanwar Singh. She alleged that in the said quarrel, her ear and nose rings fell down and she lodged a report Ext.PW1/A with the police. She was medically examined. The Doctor found the fracture of the left middle finger on X-ray and simple injuries on the forehead left side of the chin. Police visited the spot, prepared site plan and recorded the statements of the witnesses and presented the challan in the court.

The respondents denied the charges framed against them under the aforesaid sections and claimed trial. The prosecution examined its witnesses to prove the case. The respondents were also examined under Section 313 of the Code of Criminal Procedure. Their defence was that they were implicated falsely due to strained relations with the complainant and on account of the earlier litigation. However, no defence was led.

The learned trial court on appreciation of the evidence of the parties and upon going through the record, found that it was not a case under Section 147 of the Indian Penal Code, because it lacked the necessary ingredients of the alleged offence, for the reasons that first information was made to the police mentioning the names of the four accused but in order to constitute the offence under Section 147 of the Indian Penal Code, there must be participation of five persons for forming an unlawful assembly. Complainant Ram Dulari (PW1) even in the Court stated about the presence of only four persons viz. Alam Savnam, Tavasum and Shama, whereas PW2 Fameeda has disclosed the names of Savnam, Shameena, Anju alias Shama and Alam. Kanwar Singh

(PW6) has only stated about four girls and one boy, without naming anyone, nor he identified anyone in the court. Thus, the statements of the witnesses to constitute the above offence did not inspire confidence. Further as far as the grievous injuries having been sustained by the complainant Ram Dulari is concerned, the learned trial court found that on account of the alleged beatings given by Alam, Savnam, Tavasum and Shama, she sustained fracture on her left finger, but when controverted with her first information report Ext.PW1/A, wherein, she had revealed the injury on her right finger. Instead of clarifying the factual position she only admitted it to be correct, whereas, the Doctor had found the grievous injury on her left hand finger. Thus there was a material contradiction. The presence of about 15 persons have been admitted by Kanwar Singh (PW6) on the spot, but none of them was examined, only interested witnesses were examined who were having the history of long litigation between them or were admittedly not in speaking terms with the respondents. Since there was no plausible evidence on record that the Alam gave danda blow to Ram Dulari, which resulted fracture on the left hand finger, therefore, the reliability of said evidence was doubtful. There was also no evidence regarding threatening given to the life of the complainant with dire consequences. Therefore, no criminal liability could be fastened upon the respondents.

I have reappraised the evidence on record. The findings given by the learned trial court for the acquittal of the respondents is borne out from the record. Smt. Ram Dulari (PW1) has initially stated that she sustained injury/fracture over her right hand middle finger, but the Doctor opined the injury on left hand middle finger. Thus contradicted her own version. There are material contradictions as far as the evidence regarding unlawful assembly

is concerned and the role played by each of the respondents have not been spelt out. The evidence regarding giving blow with danda as alleged to have been given by Alam is not clearly made out. The parties are having a history of old litigation and enmity and in absence of the independent corroboration by the uninterested witnesses do not prove the case of the prosecution beyond a reasonable doubt. Thus, the findings of the acquittal arrived at by the learned trial court are born out from the record. Accordingly, no interference is required. The appeal is dismissed.

The bail bonds of the respondents, entered upon at any stage during the proceedings of this case stand discharged. The matter is disposed of accordingly.

September 26th, 2007. **(Surinder Singh)**
(PDS) **Judge**.